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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,815	04/09/2004	Murielle Vigny	88265-7404	8901
29157	7590	09/09/2005	EXAMINER	
BELL, BOYD & LLOYD LLC P. O. BOX 1135 CHICAGO, IL 60690-1135			BRINSON, PATRICK F	
			ART UNIT	PAPER NUMBER
			3754	

DATE MAILED: 09/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/820,815	<b>Applicant(s)</b> VIGNY ET AL.	
	<b>Examiner</b> Patrick F. Brinson	<b>Art Unit</b> 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 June 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 18-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>04/09/2004</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the subject matter recited in claim 5 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective

action in the next Office action. The objection to the drawings will not be held in abeyance.

### *Claim Objections*

2. Claim 6 is objected to because of the following informalities: Claim 6 recites “the convexity” without proper antecedent basis. Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6-8, 11, 13, 16 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent # 3,878,977 to **Carlisle**.

The patent to **Carlisle** discloses a container comprising a body having in greater section a dimension, at least one neck (16) that has an internal diameter and a wall forming the body (14) of the container being made of flexible plastic, such as polyethylene terephthalate resin (PET), which can deform for constant surface area, particularly under the weight of the flowable product contained in the container when the wall contacts a point or bearing surface, so as to form, at least one non-planar wall

portion (40). The body and neck of the container are made as a single piece. The ratio of the body to the neck is between 1:3 and 1:10. The body has an ovoid overall shape. Col. 6, lines 40-50 discloses that the elements (42) of the seam (32) extends upwardly and outwardly from the opposite ends of the element (40), and curve convexly to blend into the outer seam elements. This configuration of the seam enhances the level of stability of the filled container seated in an upright position, as shown in fig. 6. **Carlisle** does not specifically disclose the flowable product as being carbonated water or a carbonated beverage, however, the fluid utilized within the container would be determined by the intended use of the container, and it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. As to the recited structure of claim 7, **Carlisle** discloses that the body may be formed of PET, which is disclosed in Applicant's specification as having the properties recited in claim 7.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary

skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5, 9, 10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Carlisle**.

**Carlisle** does not disclose the body as being circular, the thickness of the walls nor the amount of plastic used to produce the container. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to form the body of a spherical overall shape because Applicant has not disclosed that an overall spherical shape provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the circular, ovoid shape as disclosed by **Carlisle**. Therefore, it would have been an obvious matter of design choice to modify **Carlisle** to obtain the invention as specified in claim 5. As to the structure recited in claims 9, 10 and 12, the wall thickness and amount of plastic used to produce the container is not disclosed, however, it would have been obvious to one having ordinary skill in the art at the time the invention was made to vary the wall thickness and amount of plastic used to produce the container, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

5. Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Carlisle** in view of U.S. Patent # 6,578,740 to **Hagihara**.

**Carlisle** does not disclose a closure being fitted onto the neck. The patent to **Hagihara** disclose a self-standing container formed the same flexible plastic material as **Carlisle** and being provided with a non-planar portion (5) at the point of contact between the body and the surface on which it rests. The container including body and neck portions, wherein the neck is fitted with a closure that includes a distribution cap that can be operated with one hand of a user. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide onto the spout of **Carlisle** a closure including a distribution cap, as suggested by **Hagihara** in order to alternatively dispense fluid from the container, wherein both means are equal in functioning to contain fluid within the container prior to dispensing.


### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Dunning et al., Krings, Duqueroie, and Butters are all pertinent to Applicant's invention in disclosing fluid containers having flexible side walls.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Patrick F. Brinson** whose telephone number is (571) 272-4897. The examiner can normally be reached on M-F 7:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Michael Y. Mar** can be reached on (571) 272-4906. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Patrick F. Brinson  
Primary Examiner  
Art Unit 3754

P. F. Brinson  
September 1, 2005